

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-599

SECRETARY OF THE NAVY, ET AL.,

Petitioners

—v.—

PRIVATE FRANK L. HUFF, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED OCTOBER 10, 1978
CERTIORARI GRANTED MARCH 19, 1979

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RELEVANT DOCKET ENTRIES

DATE

1975

Jan 10 Complaint, appearance, exhibits A, B, C, D & E. #1 ser. 1-14-75; #2 ser. 1-20-75.

Jan 10 Summons, copies (6) and copies (6) of complaint issued. USA & AG ser. 1-13-75.

Jan 10 REQUEST by pltf. for clerk to make service of summons, complaint & exhibits to defts. #5 & 6 pursuant to Rule 4.

Jan 10 SUMMONS, copies (2) and copies (2) of complaint issued to defts. #5 & 6.

Jan 10 CERTIFICATE of mailing by clerk as to defts. #5 & 6.

Mar 13 AMENDMENT to complaint as to the body of the complaint; c/m 3-13-75.

Mar 14 ANSWER of defts. to complaint; c/m 3-14-75. Appearance of Michael A. Katz as counsel.

Mar 14 CALENDARED. CAL/N

Mar 19 ANSWER of defts. to amended complaint; c/m 3-19-75.

Apr 14 MOTION by pltffs. for certification of class action; P&A; c/s 4-14-75.

Apr 14 STATUS CALL. (Rep. Eugene Olsen) Parker, J.

Apr 25 STIPULATION extending time for defts. to respond to motion of pltf. for certification of class action to 5-8-75. (N) Parker, J.

May 7 MEMORANDUM of points & authorities by defts. in opposition to motion of pltfs. for certification of class action; c/m 5-7-75.

May 29 CALENDAR CALL. (Rep. Eugene Olsen) Parker, J.

DATE

June 13 REPLY Memorandum by pltffs. of points and authorities in support of pltffs' motion for certification of class action; c/m 6-13-75.

June 25 STATUS CALL. (Rep. Eugene Olsen) Parker, J.

Jul 17 ORDER certifying case as a class action. (N) Parker, J.

Aug 8 STIPULATION extending time for filing motion of Pltf. for summary judgment until 8-18-75, approved. (N) Parker, J.

Aug 18 MOTION by defts. for extension of time to file cross-motion for summary judgment; P&A; c/m 8-18-75.

Aug 19 STIPULATION extending time for filing motion of Pltfs. for summary judgment until 9-22-75. (N) Parker, J.

Aug 21 ORDER granting motion of Defts. for extension of time; extending time for Defts. to file cross-motion until 9-19-75. (N) Parker, J.

Aug 22 MOTION by pltffs' for summary judgment; Statement; P&A; Appendices I thru VIII; c/m 8-22-75.

Aug 28 CHANGE of address for David F. Addlestone, counsel for pltff. CAL/N

Sept 19 MOTION by defts. for extension of time to file cross-motion for summary judgment; P&A; c/m 9-19-75.

Sept 22 ORDER granting motion of Defts. for extension of time in which to file their cross-motion for summary judgment until 9-23-75. (N) Parker, J.

Sept 23 CROSS-MOTION of defts. for summary judgment; Statement; P&A; Exhibit A, B, C, D, E, F, G, H, I, J; c/m 9-23-75.

Nov 25 CHANGE of address for Alan Dranitzke to 400 Woodward Bld., 733 15th St., N.W. 20005. c/m. CAL/N

DATE

1976

May 5 MOTION of pltfs. for summary judgment taken under advisement. Motion of defts. for summary judgment taken under advisement. Pltfs. are to submit by 5/6/76 memoranda of cases on which they rely. Defense counsel is to advise Court if any of the pltfs. were discharged other than honorably. (Rep. Eugene Olsen) Parker, J.

May 6 SUPPLEMENTAL MEMORANDUM BY pltfs. in support of pltfs. motion for summary judgment; c/s 5/6/76.

May 21 MEMORANDUM OPINION granting in part and denying in part motion of pltffs. for summary judgment and directing pltffs. counsel to submit appropriate order. (N) Parker, J.

May 26 ORDER filed May 25, 1976 amending the Memorandum Opinion of 5-21-76, *sua sponte*. (See order for details) (N) Parker, J.

May 28 ORDER filed May 27, 1976 granting in part and denying in part pltffs. motion for summary judgment. (N) Parker, J.

July 2 TRANSCRIPT of proceedings on May 5, 1976, pages 56. Court Copy. Rep. M. Eugene Olsen.

Jul 26 NOTICE of Appeal by defts. from judgment entered May 26, 1976; Gov't No Fee; copies sent to David F. Addlestone and Alan Dranitzke.

Sept 7 RECORD on Appeal delivered to USCA; Receipt acknowledged. USCA No. 76-1828)

DATE

1977

Feb 1 ORDER filed Jan. 31, 1977 amending the Court's order dated 5-27-76; granting in part and denying in part; motion of pltfs. for summary judgment; granting in part and denying in part motion of defts. for summary judgment and that this order is final and judgment shall be entered accordingly. (See order for details) (N) Parker, J.

1978

Jun 7 CERTIFIED copy of USCA Order affirming judgment in part and also vacating judgment of the District Court, in part, and remanding case to the District Court with directions to revise its judgment in the manner indicated, in accordance with the opinion filed herein; opinion.

Oct 31 ORDER filed Oct. 30, 1978 revising Order of this Court dated 5-27-76, as amended by the Order dated 1-31-77, pursuant to the direction of the U.S. Court of Appeals. (See order for details) (N) Parker, J.

Nov 27 CHANGE of address for Alan Dranitzke, counsel for pltffs. to 1712 N St., N.W., 20036, Ph. 331-1614. CAL/N.

**COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND MANDAMUS**

Plaintiffs, Frank L. Huff, Robert A. Falatine, and Robert E. Gabrielson, for their complaint against the defendants, Secretary of the Navy, Commandant of the Marine Corps, Commander-in-Chief U.S. Pacific Fleet, Commanding General Fleet Marine Force Pacific, Commanding General First Marine Aircraft Wing, and Commanding Officer U.S. Marine Corps Air Station, allege:

1. This action arises under the First and Fifth Amendments to the Constitution of the United States and 10 U.S. Code § 1034. The jurisdiction of this Court exists under 28 U.S. Code §§ 1331, 1361, and 2201. The matter in controversy exceeds the value of \$10,000.00 exclusive of interest and costs and arises under the laws of the United States.

2. Plaintiffs are United States citizens and members of the United States Marine Corps stationed at the Marine Corps Air Station, Iwakuni, Japan. The plaintiffs sue to restrain the defendants from denying their rights under the First Amendment to the Constitution and to declare 1st Marine Aircraft Wing Order 5370.1A, Marine Corps Air Station (Iwakuni, Japan) Order 5370.3A, Fleet Marine Force Pacific Order 5370.3, and Commander-in-Chief, U.S. Pacific Fleet Instruction 5440.3C unconstitutional on their face and as applied.

3. The defendant, Secretary of the Navy, is the administrative head of the Navy and the Marine Corps and is charged by law with supervising and prescribing the rules and regulations for the administration of the Navy and the Marine Corps. The defendant, Commandant of the Marine Corps, is the military head of the Marine Corps. The defendant, Commander-in-Chief U.S. Pacific Fleet, is the military head of the Pacific Fleet. The defendant, Commanding General Fleet Marine Force Pacific, is the military head of the Fleet Marine Force in the Pacific. The defendant, Commanding General 1st Marine Aircraft Wing, is the military head of the 1st

Marine Aircraft Wing. The defendant, Commanding Officer U.S. Marine Corps Air Station, is the military head of the Marine Corps Air Station Iwakuni, Japan.

4. 1st Marine Aircraft Wing Order (hereinafter MAWO) 5370.1A and Marine Corps Air Station, Iwakuni, Japan Order (hereinafter MCASO) 5370.3A, both dated December 14, 1973, are identical and read, in pertinent part, as follows:

"(2) No member of this command will originate, sign, distribute, or promulgate petitions, publications, including pamphlets, newspapers, magazines, handbills, flyers, or other similar printed or written materials on board any ship, craft, aircraft, or in any vehicle of the Department of the Navy, or aboard any military installation, while in a duty status or non duty status, in uniform or out of uniform, or anywhere within a foreign country, regardless of uniform or duty status unless prior command approval is obtained."

5. Fleet Marine Force Pacific Order (hereinafter FMFO) 5370.3 of April 1, 1974 reads, in pertinent part, as follows:

"b. No Fleet Marine Force, Pacific or Marine Corps Bases, Pacific, personnel will originate, sign, distribute, or promulgate petitions, publications, including pamphlets, newspapers, magazines, handbills, flyers, or other printed or written material, on board any ship, craft, aircraft, or in any vehicle of the Department of the Navy, or any military installation on duty or in uniform, or anywhere within a foreign country irrespective of uniform or duty status, unless prior command approval is obtained."

6. Commander-in-Chief, Pacific Fleet Instruction (hereinafter CINCPACFLTINST) 5440.3C of March 19, 1974, reads, in pertinent part, as follows:

"(2) Pacific Fleet personnel shall not originate, sign, distribute or promulgate petitions, publications, including pamphlets, newspapers, magazines, hand-

bills, flyers or other printed or written material, on board any ship, craft, aircraft or in any vehicle of the Department of the Navy, on any military installation, in a foreign country, on duty or in uniform unless prior command approval is obtained."

7. On or about May 2, 1974, plaintiff Huff, pursuant to MAWO 5370.1A, requested permission of defendant, Commanding General, 1st Marine Aircraft Wing, to distribute for signatures in his barracks a petition to Senator Alan Cranston regarding the use of members of the military and National Guard in labor disputes. A copy of the petition is attached hereto as Exhibit A. Plaintiff Huff also requested permission to distribute in a designated off-base area copies of an article on the use of Article 138 of the Uniform Code of Military Justice. Plaintiff Huff stated that the petitioning and distribution would be accomplished out of uniform and during off-duty hours, would involve the use of no government materials, and would not interfere with the performance of duties of any military personnel.

8. On or about May 3, 1974, subsequent to plaintiff Huff's submission of the request to distribute the petition and article, Lieutenant Colonel N. A. Smith, Commanding Officer of Headquarters & Maintenance Squadron 15, terminated plaintiff Huff's access to classified material and transferred plaintiff from his duties in the Classified Material Control Center. Since such date, plaintiff Huff has been removed from normal military duties and assigned menial tasks.

9. On or about May 20, 1974, defendant, Commanding General, 1st Marine Aircraft Wing, denied both requests of plaintiff Huff. Defendant Commanding General stated that the petition "contains gross misstatements and implications of law and fact as well as impugning by innuendo the motives and conduct of the Commander-in-Chief of the Armed Forces . . ." and that granting permission to distribute the petition "would be contrary to my responsibility as a commander to maintain good order and discipline and afford proper guidance to the men under my command." He denied permission to distribute

the article because the copyright release submitted was considered insufficient evidence to demonstrate that the article had been released by the copyright holder.

10. On or about May 8, 1974, plaintiff Falatine, pursuant to MAWO 5370.1A and MCASO 5370.3A, requested permission from the defendants, Commanding General, 1st Marine Aircraft Wing and Commanding Officer, Marine Corps Air Station, Iwakuni, Japan, to distribute for signatures either on or off base a petition to Congressperson Ronald Dellums regarding amnesty for Viet Nam war resisters. A copy of the petition is attached hereto as Exhibit B.

11. On or about May 20, 1974, defendant, Commanding General, 1st Marine Aircraft Wing, denied plaintiff Falatine's request, stating that the petition contained "gross misstatements and implications of law and fact. In addition, it impugns by innuendo the motives and conduct of the Commander-in-Chief of the Armed Forces. . . To authorize permission to circulate . . . would be contrary to my responsibility as a commander to maintain good order and discipline and afford proper guidance to the men under my command."

12. On or about June 24, 1974, plaintiff Huff and plaintiff Falatine separately requested, pursuant to MAWO 5370.1A, permission from the defendant, Commanding General, 1st Marine Aircraft Wing, to distribute copies of a leaflet containing the Declaration of Independence and the First Amendment to the Constitution, while off-duty and out of uniform. Plaintiff Huff requested permission to distribute off-base whereas plaintiff Falatine requested permission to distribute on-base. A copy of the leaflet is attached hereto as Exhibit C.

13. On or about July 1, 1974, defendant, Commander General, 1st Marine Air Wing, granted plaintiff Huff's request to distribute said leaflet. However, on that same date, defendant, Commanding General, 1st Marine Aircraft Wing, denied plaintiff Falatine's request to distribute that same leaflet, stating that the introductory paragraph to the leaflet was "disrespectful and contemptuous of all of your superiors, officers, noncommissioned officers and civilians alike" and constituted "a clear

hazard to the discipline and morale within the 1st Marine Aircraft Wing."

14. On or about July 12, 1974, plaintiffs Huff and Falatine, while off-base, off-duty, and out of uniform, showed to fellow Marines a proposed letter to Senator J. William Fulbright concerning United States support of the South Korean government. A copy of the letter is attached hereto as Exhibit D. Not wishing to violate MAWO 5370.1A/MCASO 5370.3A, plaintiffs Huff and Falatine did not distribute copies of the letter, but merely exhibited the letter to interested persons. Nevertheless, both plaintiffs were arrested by military police and charged, pursuant to Article 92 of the UCMJ, with violating MAWO 5370.1A/MCASO 5370.3A.

15. Following a trial by court martial in August 1974, plaintiff Huff was found guilty of violating the orders and was sentenced to sixty days confinement, forfeiture of half pay for two months, and reduction in rank from E-3 to E-1, the lowest enlisted grade. The charges against plaintiff Falatine were dismissed.

16. On or about July 30, 1974, plaintiff Gabrielson requested permission of defendant, Commanding Officer, Marine Corps Air Station, Iwakuni, Japan, to distribute in certain designated areas off-base near the main gate and on-base in the "B" barracks area, while off-duty and out of uniform, copies of the proposed letter to Senator J. William Fulbright concerning United States support of the South Korean government (Exhibit D) and a statement on the prior arrests of plaintiffs Huff and Falatine for displaying a copy of the same letter to Senator Fulbright. A copy of the statement is attached hereto as Exhibit E.

17. On or about August 6, 1974, defendant, Commanding Officer, Marine Corps Air Station, Iwakuni, partially granted plaintiff Gabrielson's request to distribute copies of the letter and the statement in a designated on-base area. However, permission was denied to distribute the materials in the barracks itself and plaintiff Gabrielson was prohibited from engaging "in argument or debate of the issue presented in your material." Plaintiff Gabrielson's request to distribute both materials

off-base was denied because it was considered by defendant Commanding Officer "a form of political activity within the host country" which was prohibited by the Status of Forces Agreement between the United States and Japan. (Article XVI, Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan, 11 U.S.T. 1652, TIAS 4510, January 19, 1960).

18. The promulgation, interpretation, and administration of the challenged orders by defendants are arbitrary and capricious. Further, defendants have arbitrarily and capriciously misinterpreted the Status of Forces Agreement to include political activity of Marine personnel concerning United States affairs directed towards United States citizens.

19. Plaintiffs wish to distribute petitions to members of Congress, leaflets, and newspapers both on-base and off-base while off-duty and out of uniform. Defendants, Commanding General, 1st Marine Aircraft Wing and Commanding Officer, Marine Corps Air Station Iwakuni, pursuant to the challenged Orders and Instruction, have required and continue to require plaintiffs to submit all such material for command approval before engaging in any petitioning or distribution, regardless of the circumstances.

20. Because of the challenged Orders and Instruction, plaintiffs are restricted and intimated from exercising rights guaranteed to them by the First Amendment of the Constitution and 10 U.S.C. § 1034. Plaintiffs fear command harassment if they continue to submit written materials for command approval or censorship prior to distribution; plaintiffs fear criminal prosecution under the challenged Orders and Instruction if they attempt any such political activity without prior approval.

21. MCASO 5370.3A, MAWO 5370.1A, FMFO 5370.3 and CINCPACFLTINST 5440.3C are unlawful on their face and/or as applied in this case in that they:

(a) place an unconstitutional prior restraint on plaintiff's First Amendment rights of freedom of speech, press,

and association and right to petition the government for redress of grievances;

(b) are unconstitutionally broad and vague in that they appear to prohibit virtually all writing and exchange of written material by plaintiffs and all members of the Marine Corps at any time while under the authority of defendants;

(c) are applied in an arbitrary and capricious manner;

(d) violate plaintiffs' rights under the due process clause of the Fifth Amendment to the Constitution;

(e) violate 10 U.S. Code § 1034, which provides: "No person may restrict any member of the Armed Forces in communicating with a member of Congress, unless the communication is unlawful or violates a regulation necessary to the security of the United States," and DOD Directive 1344.10, which guarantees the right of military personnel to "[s]ign a petition for specific legislative action."

(f) violate and exceed the scope of DOD Directive 1325.6, OPNAV Instruction 1620.1, and Marine Corps Order 5370.4, which guarantee the right of service members to write, publish, and distribute material off-base while off-duty and out of uniform;

(g) exceed the scope of the Status of Forces Agreement with Japan, which does not apply to political activity of Marines concerning United States affairs directed towards United States citizens.

22. The plaintiffs fear harassment from their superior officers as a result of the filing of this Complaint.

23. Unless this Court grants the relief requested, plaintiffs will continue to suffer irreparable injury and will be denied the exercise of their First Amendment rights.

24. The plaintiffs have exhausted their administrative remedies and have no adequate remedy at law.

WHEREFORE, plaintiffs pray for judgment as follows:

(1) Declaring that 1st Marine Aircraft Wing Order 5370.1A, Marine Corps Air Station (Iwakuni, Japan) Order 5370.3A, Fleet Marine Force, Pacific Order 5370.3, and Commander-in-Chief, Pacific Fleet Instruction 5440.3C

are unconstitutional on their face and as applied in violation of the First and Fifth Amendments to the United States Constitution;

(2) Declaring that MAWO 5370.1A, MCASO 5370.3A, FMFO 5370.3, and CINCPACFLTINST 5440.3C violate plaintiffs' rights under 10 U.S. Code § 1034 and DOD Directive 1344.10;

(3) Declaring that MAWO 5370.1A, MCASO 5370.3A, FMFO 5370.3, and CINCPACFLTINST 5440.3C violate DOD Directive 1325.6, OPNAV Instruction 1620.1, and MCO 5370.4;

(4) Declaring that Article XVI of the Status of Forces Agreement, Under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan, 11 U.S.T. 1642, TIAS 4510 (January 19, 1960), is not a bar to the off-base distribution by Marines of printed materials concerning United States political affairs to United States citizens;

(5) Restraining defendants from continuing to deny plaintiffs their rights to freedom of speech, press, and association and their rights to petition Congress for redress of grievances under the First Amendment to the United States Constitution and under 10 U.S. Code § 1034;

(6) Entering its order in the nature of mandamus requiring defendants to perform their duty to protect and insure plaintiffs' constitutional and statutory rights by permitting plaintiffs to distribute petitions and other written materials not related to internal Japanese political affairs while off-base, off-duty, and out of uniform, by permitting plaintiffs to distribute for signature petitions to the Congress of the United States while on-base, off-duty, and out of uniform, and by permitting plaintiffs to distribute other written materials while on-base, off-duty, and out of uniform in the absence of a showing that distribution of such materials would result in a clear and present danger to the security of the military command;

(7) Declaring plaintiff Huff's conviction by the court martial to be invalid and directing the defendants to restore to plaintiff Huff all pay, benefits, and rank of which he was deprived by virtue of said conviction;

(8) Directing the defendants to expunge and destroy any reference to plaintiff Huff's and Falatine's arrests on July 12, 1974 and plaintiff Huff's subsequent conviction in plaintiffs' military personnel files, refrain from communicating the fact of the arrests and the conviction to any civilian or military law enforcement agency, and, if such information has been distributed, forward a correction to reflect the illegality of the arrests and the conviction;

(9) Issuing an order directing the defendants, their agents, and subordinates not to harass the plaintiffs because of their filing of this Complaint;

(10) Granting such other and further relief as the nature of the case may require and to the Court may seem just and proper.

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EXHIBIT A

PETITION TO CONGRESS

To Senator Alan Cranston:

We the undersigned working people and military men and women protest the use of soldiers and members of the National guard and military reserves to break strikes or otherwise go into action against Americans. Whenever the military intervenes in labor disputes, it is on the side of the bosses and against the working people. There is no excuse for using working people in the military against striking workers.

We demand that you immediately propose legislation forbidding the use of any units of the United States armed forces or the National Guard in domestic disputes between working people and their employers.

EXHIBIT C

We Hold These Truths To Be Self-Evident
 (But Do The Brass?)

In two years our country will have its 200th birthday. Many of the basic principles our country was founded upon like the Declaration of Independence and the First Amendment are really "Right On". Yet many of our "superiors" call anyone who tries to exercise his First Amendment right to freedom of speech and press a "communist". They also put down anyone who really believes in our Declaration of Independence which upholds the right of the citizens of any country to change their government when it becomes unresponsive to their needs and the idea that the people of a country should be able to choose their own form of government even if the leaders of our government disagree with their choice.

These principles are worth defending against their enemies wherever they are found. Check them out, they are really worth diggin' on. Since they are written in old style English, we've included modern interpretation.

THE DECLARATION OF INDEPENDANCE

WHEN IN THE COURSE OF HUMAN EVENTS IT BECOMES NECESSARY FOR ONE PEOPLE TO DISOLVE THE POLITICAL BANDS WHICH HAVE CONNECTED THEM WITH ANOTHER, AND TO ASSUME AMONG THE POWERS OF THE EARTH, THE SEPARATE AND EQUAL STATION TO WHICH THE LAWS OF NATURE AND OF NATURE'S GOD ENTITLE THEM, A DECENT RESPECT TO THE OPINIONS OF MANKIND REQUIRES THAT THEY SHOULD DECLARE THE CAUSES WHICH IMPEL THEM TO THE SEPARATION.

WE HOLD THESE TRUTHS TO BE SELF-EVIDENT, THAT ALL MEN ARE CREATED EQUAL, THAT THEY ARE ENDOWED BY THEIR CREATOR WITH CERTAIN UNALIENABLE RIGHTS, THAT

AMONG THESE ARE LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS.

THAT TO SECURE THESE RIGHTS, GOVERNMENTS ARE INSTITUTED AMONG MEN, DERIVING THEIR JUST POWERS FROM THE CONSENT OF THE GOVERNED,—THAT WHENEVER ANY FORM OF GOVERNMENT BECOMES DESTRUCTIVE OF THESE ENDS, IT IS THE RIGHT OF THE PEOPLE TO ALTER OR TO ABOLISH IT, AND TO INSTITUTE A NEW GOVERNMENT, LAYING ITS FOUNDATION ON SUCH PRINCIPLES AND ORGANIZING ITS POWERS IN SUCH FORM, AS TO THEM SHALL SEEM MOST LIKELY TO EFFECT THEIR SAFETY AND HAPPINESS.

PRUDENCE, INDEED, WILL DICTATE THAT GOVERNMENTS LONG ESTABLISHED SHOULD NOT BE CHANGED FOR LIGHT AND TRANSIENT CAUSES: AND ACCORDINGLY ALL EXPERIENCE HATH SHOWN THAT MANKIND ARE MORE DISPOSED TO SUFFER WHILE EVILS ARE SUFFERABLE, THAN TO RIGHT THEMSELVES BY ABOLISHING THE FORMS TO WHICH THEY ARE ACUSTOMED.

BUT WHEN A LONG TRAIN OF ABUSES AND USURPATIONS PURSUING INVARIABLY THE SAME OBJECT, EVINCES A DESIGN TO REDUCE THEM UNDER ABSOLUTE DESPOTISM. IT IS THEIR RIGHT, IT IS THEIR DUTY, TO THROW OFF SUCH GOVERNMENT, AND TO PROVIDE NEW GUARDS FOR THEIR FUTURE SECURITY.

Modern Interpretation

When a group of people decide that they want to set up their own government, the decent thing for them to do, is to explain to everyone why they feel this way.

Some things are obviously true—that all people are created equal, that everyone has the same basic rights including the right to life, liberty and the pursuit of happiness.

Governments are set up and given power by the people they govern in order to make sure that everyone gets these rights. Whenever people feel that they are not getting their rights, then the people have the right to change the government to make them safer and happier.

Governments that have been around a long time shouldn't be changed by whim or for minor reasons, but history has shown that people tend to put up with governments' wrong-doing for as long as they can stand it before they think about changing it all.

But, when for a long time the government abuses its power, disregards the will of the people, and seems to be becoming a dictatorship, then it is the right, it is the duty, of the people to overthrow the government and to design a new government that will serve them properly.

THE FIRST AMENDMENT OF THE U.S. CONSTITUTION

CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE TO PEACEABLY ASSEMBLE AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

Modern Interpretation

Our government shall not take away our right to believe, say, or print whatever we wish. Also the government can not take away our right to circulate petitions and participate in peaceful demonstrations asking it to change its actions.

EXHIBIT D

Senator J. W. Fulbright
1215 Dirksen (HSOB) Bldg.
Washington, D.C. 20510

Dear Senator Fulbright:

I am writing to you as a citizen who is concerned about the effects and implications of American foreign policy toward the Pak regime of South Korea. I understand that American tax dollars and the U.S. military presence in South Korea are being used to support an anti-democratic dictatorship in South Korea.

In particular, I am upset about the present court-martials of 55 people—all civilians, and including the Japanese graduate students—being charged under President Pak's "Emergency Measure 4" of April 3rd. I understand that at least 7 of these people face death sentences in these court-martials being held under martial law.

I also understand that one man being tried, Kim Jiha, is a South Korean poet. He now faces the death penalty for the "crime" of acting as middleman for a donation from a Korean Catholic to the National Federation of Democratic Youth and Students—an organization which the Pak regime claims is operating as a "first stage in north Korean maneuverings to communize the country," and poses a serious threat to national security. People close to youth and students in South Korea claim that this "federation" was simply the name that students at various schools concerned about the disappearance of democratic rights in South Korea had agreed to put at the bottom of their leaflets.

Since the American government is supporting the Pak regime in South Korea with money and military power, we cannot claim that this matter is "out of our hands" on the grounds that the issue is a matter of the internal affairs of South Korea. I want you to start a Congressional investigation into the court-martials of Kim Jiha and others being prosecuted under Pak's emergency

measures. As I sign this letter, Kim Jiha and other Korean patriots may be sentenced to death and executed.

ALL KOREAN POLITICAL PRISONERS MUST BE FREED. ALL COURT-MARTIALS AGAINST KOREAN PATRIOTS MUST BE STOPPED. THE LIVES OF THOSE IN SOUTH KOREA SPEAKING OUT FOR DEMOCRATIC RIGHTS MUST BE SAVED. If not, the words "freedom" and "democracy" will have been made a mockery of once more under an American-supported regime.

In earnest concern,

EXHIBIT E

IWAKUNI FIVE TAKEN TO COURT FOR TRYING TO HELP KOREAN PATRIOTS

Five Marines at Iwakuni are being given Special Court Martials for showing other people a copy of an individual letter to Senator J. W. Fulbright about the emergency court-martials being given to civilians in South Korea under Pak Chung Hee's Emergency Measure 4.

These Marines have joined concerned citizens from all over the world in protesting against the way South Korean president Pak has suppressed democratic rights in that country. Demonstrations on four continents on July 19 highlighted the upsurge of an international campaign protesting the punishments—ranging from 20 years imprisonment to the death sentence—meted out to 55 political prisoners by a South Korean military tribunal in early July.

As 1200 protest marchers rallied in Tokyo, similar demonstrations took place in New York, London, Sidney, Canberra, Melbourne and half a dozen other cities in Japan and abroad.

Rather than confront WgO 5370.1A/MCASO 5370.3A (which says we have to get prior command approval to distribute literature or circulate, sign or originate petitions, among other activities, whether on or off base, even while off duty by circulating a petition, the "Iwakuni Five" simply stood on the street showing others a copy of the attached individual letter to Senator Fulbright. More than 40 copies of this letter have already been sent to Senator Fulbright. You can sign this letter without fear of prosecution because it is an individual letter to Senator Fulbright, not a petition.

The Marines being court martialed are: LCPL Gerald W. McCauley, PVT Hugh G. Dalton, and LCPL Robert A. Falatine, all of Hdqtrs & Maint Sqdrn 17; PFC Patrick F. McDonald of Hdqtrs & Maint Sqdrn 12; and LCPL Frank Huff of Hdqtrs & Maint Sqdrn 15.

Since military court martials are supposed to be opened to the public, and you are part of the public, *you should have the right to attend the court martials of the Iwakuni Five.* So if you are interested, ask to get off duty with this right as your reason. If you don't have duty during the trials, just come to the second floor of Wing Legal, where the trials will be held.

The trials will probably start early in August. The Iwakuni Five Defense Committee will be distributing literature (legally) to keep everyone up to date about trial dates and what is happening with the trials. All five defendants have retained Chris Coates, a civilian lawyer associated with the National Lawyers Guild/Military Law Office who is living in Iwakuni, to defend them at their court martials.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-43

PRIVATE L. HUFF, ET AL., PLAINTIFFS

v.

SECRETARY OF THE NAVY, ET AL., DEFENDANTS

AMENDMENT TO COMPLAINT

Plaintiffs, by their counsel, amend their Complaint as of course pursuant to the provisions of Rule 15(a), Federal Rules of Civil Procedure, as follows:

1. The following sentence is added to Paragraph 1 of the Complaint: This action is brought on behalf of the plaintiffs and on behalf of all other members of the Marine Corps stationed at, assigned to, or on duty at Marine Corps Air Station, Iwakuni, Japan.
2. The following paragraphs are added numerically after Paragraph 6 of the Complaint:

Class Action Allegations

6A. Plaintiffs bring this suit as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

6B. Members of plaintiff class, consisting of all Marine Corps personnel stationed at, assigned to, or on duty at the Marine Corps Air Station, Iwakuni, Japan, are so numerous as to make it impracticable to bring them before the Court. Upon information and belief, plaintiff class consists of approximately 5,000 people.

6C. There are questions of law and fact presented herein which are common to the entire class of persons represented by the plaintiffs and which predominate over any questions affecting only individual members. All members of the class are equally subject to the aforementioned regulations complained of by the plaintiffs

and have the same legal basis for challenging said regulations.

6D. Defendants, by promulgating and enforcing the aforementioned regulations, have acted on grounds generally applicable to the entire class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

6E. Plaintiffs can fairly and adequately protect the interests of the entire class. Plaintiffs have in good faith endeavored to use the administrative and legal process to assert and protect their constitutional rights and the rights of their fellow Marines. Plaintiffs are represented by attorneys who are experienced in this area of constitutional litigation.

6F. Plaintiffs know of no interest of members of the class in individually controlling separate actions. Plaintiffs know of no difficulties likely to be encountered in management of the class action.

/s/ Alan Dranitzke
 ALAN DRANITZKE
 DAVID REIN
 DAVID ADDLESTONE
 Attorneys for Plaintiffs

Certificate of Service

I certify that on this 13th day of March, 1975, I served the foregoing Amendment by mailing a true copy thereof, first class, postage pre-paid, to Michael A. Katz, Assistant United States Attorney, United States Court-house, Washington, D.C. 20001.

/s/ Alan Dranitzke
 ALAN DRANITZKE

APPENDIX IV

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0043

PRIVATE FRANK L. HUFF, ET AL., PLAINTIFFS

v.

SECRETARY OF THE NAVY, ET AL., DEFENDANTS

AFFIDAVIT OF FRANK L. HUFF

I, Frank L. Huff, being duly sworn, do depose and say:

1. I am Frank L. Huff, 549-82-3479, a Private in the U.S. Marine Corps assigned to the First Marine Aircraft Wing at Marine Corps Air Station, Iwakuni, Japan.

2. I have read and hereby verify the complaint in the above-captioned action and attest to its contents.

3. On May 2, 1974, in compliance with First Marine Aircraft Wing Order 5370.1A/Marine Corps Air Station Order 5370.3A, I submitted a request to the Commanding General, 1st Marine Aircraft Wing for permission to distribute in my barracks a petition to Senator Alan Cranston regarding the use of members of the military and National Guard in labor disputes. (A copy of the petition was submitted to the Court as Exhibit A to the complaint.) In that same letter, I also requested permission to distribute off-base outside the main gate of the Air Station copies of an article on the use of Article 138 of the Uniform Code of Military Justice. I stated that the distribution and petitioning would be accomplished while out of uniform and off-duty, would involve the use of no government materials, would not interfere with pedestrian or vehicular traffic and would not interfere with the performance of duties of any military personnel. A copy of said letter is attached as Exhibit 1 to this affidavit.

4. On or about May 22, 1974, I received a response from Gen. V. A. Armstrong, Commanding General, 1st Marine Aircraft Wing, denying both my requests of May 2. Gen. Armstrong stated that the petition to Sen. Cranston "contains gross mistatements and implications of law and fact" and that to allow its distribution "would be contrary to my responsibility as a commander to maintain good order and discipline and afford proper guidance to the men under my command." He denied permission to distribute the article because he said that the copyright release was insufficient. A copy of said letter is attached as Exhibit 2 to this affidavit.

5. On May 3, 1974, subsequent to my request to distribute the petition and article, I was informed that Lt. Col. N. A. Smith, commanding officer of Headquarters and Maintenance Squadron 15, had terminated my access to classified material. I was also transferred from my duties in the Classified Material Control Center to menial assignments. On May 15, 1974, I was assigned to duties at a dining facility on the Air Station.

6. On May 9, 1974, I submitted a letter of redress pursuant to Article 138 of the Uniform Code of Military Justice to Lt. Col. Smith, requesting that my access to classified material be reinstated. A copy of said letter is attached as Exhibit 3 to this affidavit.

7. On May 14, 1974, I received a response from Lt. Col. Smith, denying my request. Lt. Col. Smith stated that the termination of my security access was due to my involvement with "Semper Fi", an unofficial G.I. newspaper. A copy of said response is attached as Exhibit 4 to this affidavit.

8. On May 24, 1974, I submitted to the Commanding General, 1st Marine Aircraft Wing, a petition for redress of grievances pursuant to Article 138 of the UCMJ, requesting that 1st Marine Aircraft Wing Order 5370.1A (WgO 5370.1A) and Marine Corps Air Station Order 5370.3A (MCASO 5370.3A) be rescinded as violative of the First Amendment to the U.S. Constitution. A copy of said letter is attached as Exhibit 5 to this affidavit.

9. On June 27, 1974, I received a reply from Gen. V. A. Armstrong, Commanding General, 1st Marine Air-

craft Wing, denying me redress of grievances. A copy of said reply is attached as Exhibit 6 to this affidavit.

10. On July 26, 1974, I submitted for redress of grievances pursuant to Article 138 of the UCMJ to the Commandant of the Marine Corps, requesting that WgO 5370.1A be rescinded. A copy of said letter is attached as Exhibit 7 to this affidavit.

11. On November 11, 1974, the Commanding General, Fleet Marine Force Pacific, stated in a letter to the Secretary of the Navy via the Commandant of the Marine Corps that my Article 138 complaint was "without merit." A copy of said letter is attached as Exhibit 8 to this affidavit.

12. On June 24, 1974, pursuant to WgO 5370.1A/MCASO 5370.3A, I requested permission from the Commanding General, 1st Marine Aircraft Wing, to distribute copies of a leaflet containing the Declaration of Independence and the First Amendment to the U.S. Constitution. I sought to distribute the leaflet outside the main gate while off duty and out of uniform. Robert A. Falatine, my co-plaintiff in this action, requested permission on the same date to distribute the same leaflet at certain designated areas on base. (A copy of the leaflet was submitted to the Court as Exhibit C to the complaint.)

13. On July 1, 1974, Gen. V. A. Armstrong granted me permission to distribute the leaflet at designated times from July 2 through July 6. A copy of Gen. Armstrong's letter is attached as Exhibit 9 to this affidavit. On the same date, co-plaintiff Falatine was denied permission to distribute the same leaflet on base because the leaflet constituted "a clear hazard to the discipline and morale within the 1st Marine Aircraft Wing."

14. On or about July 12, 1974, I along with several other Marines, while off-base, off-duty and out of uniform, showed a copy of a proposed letter to Senator J. William Fulbright concerning United States support for the South Korean government to other Marine Corps personnel outside the main gate of the Air Station. (A copy of the letter was submitted to the court as Exhibit D to the complaint.) Not wishing to violate WgO 5370.

1A/MCASO 5370.3A, I purposely did not distribute copies of the letter or ask for signatures; I merely showed it to interested Marines. In spite of these precautions to avoid disobedience of the regulations, I was arrested by military police and charged with violating WgO 5370.1A/MCASO 5370.3A.

15. Following Special Court Martial proceedings in August, 1974, I was convicted of 2 counts under Article 92 of the UCMJ of violating the regulations and sentenced to 60 days confinement at hard labor, forfeiture of half pay and reduction in rank from E-3 to E-1, the lowest enlisted grade.

16. It is my belief that Marine Corps authorities maintain records of my arrest and conviction, and that such records will jeopardize my chances for future employment and other opportunities as well as for promotion and desirable assignments within the Marine Corps.

17. I continue to desire to distribute petitions to the U.S. Congress, copies of the *Semper Fi* newspaper and information on subjects of general interest to members of the Marine Corps, including amnesty for American war resisters and the Constitutional rights of members of the U.S. armed forces.

18. I believe that I have a right under the First Amendment to the Constitution and 10 U.S. Code Section 1034 to circulate for signature petitions to the U.S. Congress while on-based and off-duty, without seeking command approval, as long as I do not interfere in the performance of any military duties or operations.

19. I believe that I have a right to distribute petitions and other literature to Marine Corps personnel while off-base, off-duty and ~~out-of-uniform~~ without command approval as long as I do not involve myself in Japanese government or politics.

20. I do not wish to distribute any material relating to Japanese politics or the conduct of the government of Japan. I believe that the distribution of information on American affairs to American military personnel falls outside the prohibition on Americans participating in Japanese political activity as contained in the Status of Forces Agreement between the United States and Japan.

21. I fear that I will be subject to further arrest and prosecution if I continue to exercise my lawful

rights under the First Amendment to the United States Constitution.

22. I believe that WgO 5370.1A/MCASO 5370.3A are unlawfully vague and overbroad as evidenced by my arrest on July 12, 1974 despite my efforts to comply with the language of the regulations. Further, the regulations on their face appear to present virtually all non-verbal communicative activity by Marines. For example, activities such as passing around a copy of a sports magazine, writing poetry or co-signing a letter to the editor of a publication appear to be prohibited without prior command approval.

23. I believe that in reviewing requests to distribute written material, the Commanding General, 1st Marine Aircraft Wing, has acted arbitrarily and capriciously and has not been governed by ascertainable standards. For example, on July 1, 1974, the Commanding General approved my petition to distribute a leaflet while simultaneously denying another request to distribute the same leaflet on the basis of its content (see par. 13 above).

24. By requiring me to follow cumbersome and time-consuming authorization procedures, by denying requests to distribute petitions to the U.S. Congress and other important information, and by subjecting me to arrest and prosecution merely for exhibiting a copy of a letter to a U.S. Senator, defendants in this action have drastically and unjustifiably curtailed my ability to exercise my First Amendment rights.

/s/ Frank L. Huff
FRANK L. HUFF

Sworn and subscribed to and before me on this 21st day of May, 1975, U.S. Marine Corps Air Station, Iwakuni, Japan.

/s/ Douglas C. Brown
DOUGLAS C. BROWN
Capt USMCR
Judge Advocate

Authorized to administer oaths and act as Notary Public under Article 136(a), Uniform Code of Military Justice; Title 10 USC, Sec. 936; and Public Law 86-589 approved 51st 60.

EXHIBIT 1

Headquarters and Maintenance Squadron 15
 Marine Aircraft Group #5
 First Marine Aircraft Wing
 Fleet Marine Force Pacific
 FPO San Francisco 96602

From: Lance Corporal Frank L. Huff, 549 82 3479/6639,
 USMC

To: Commanding General, First Marine Aircraft
 Wing

Via: (1) Commanding Officer, Headquarters and
 Maintenance Squadron 15

(2) Commanding Officer, Marine Aircraft Wing
 15

Subj: Request for prior approval to circulate copies of
 Enclosure (1) and to distribute copies of enclosure
 (2), as required by WgO 5370.1A/
 MCASO 5370.3A

Ref: (a) WgO 5370.1A
 (b) MCASO 5370.3A

Encl: (1) Petition to Senator Alan Cranston
 (2) Leaflet in regard to Article 138, UCMJ
 (3) Copy of copyright release

I, Frank L. Huff, in compliance with references (a) and (b) request permission to circulate enclosure (1) for signatures in my barracks, building 1671, MCAS, Iwakuni, Japan, and to distribute copies of enclosure (2) along the side of the street which runs from the main gate, MCAS, Iwakuni, Japan, to the area known as "Three Corners". These permissions are requested for the days of 10 May through 14 May, 1974, and for the time of 1630 hours to 2130 hours. I also request written assurance that servicepeople signing this petition, enclosure (1), will not be prosecuted for doing such.

This circulation and distribution will:

- (a) be during off-duty hours and out of uniform;
- (b) constitute no interference with the performance of my duties or the duties of other military personnel;
- (c) involve the use of no government material;
- (d) not result in the coercing of anyone to take or read or sign copies of enclosures (1) or (2);
- (e) be done in such a way as to avoid interference with pedestrian and vehicular traffic;
- (f) not involve the use of any stands;
- (g) not involve the posting of any literature announcing this circulation or distribution;
- (h) honor military courtesy; and
- (i) not in any way result in my involvement in Japanese political affairs.

I respectfully request that this letter be forwarded up the chain until it reaches the person who has the full authority to approve or deny this request and that I receive a response to this request on or before 8 May, 1974. I thank you for your consideration in this matter and will be awaiting your prompt reply so that I may make arrangements for the circulation of enclosure (1) and distribution of enclosure (2).

Date: 2 May 74

/s/ Frank L. Huff
 FRANK L. HUFF

[SEAL]

EXHIBIT 2

UNITED STATES MARINE CORPS
HEADQUARTERS
1st Marine Aircraft Wing, FMF
FPO, San Francisco, 96602

IN REPLY REFER TO:
17:MPM:gwb
5370
20 MAY 1974

From: Commanding General
To: Lance Corporal Frank L. HUFF, 549 82 3479/
6639, U.S. Marine Corps
Via: (1) Commanding Officer, Marine Aircraft Group
15, Marine Aircraft Wing
(2) Commanding Officer, Headquarters and
Maintenance Squadron 15, Marine Aircraft
Group 15, 1st Marine Aircraft Wing
Subj: Request to circulate a petition and other printed
matters
Ref: (a) Your letter of 2 May 1974

1. Reference (a), which requested permission to circulate a petition addressed to Senator Alan Cranston and to distribute a leaflet in regard to Article 138, UCMJ, was forwarded to me through your chain of command. Careful consideration has been given to the requests contained therein and with respect to each you are advised as follows:

a. The petition which you desire to circulate contains gross misstatements and implications of law and fact as well as impugning by innuendo the motives and conduct of the Commander-in-Chief of the Armed Forces in the exercise of his constitutional responsibilities. To authorize permission to circulate such grossly erroneous and misleading commentary would be contrary to my respon-

sibility as a commander to maintain good order and discipline and afford proper guidance to the men under my command. Accordingly, your request to circulate the petition as submitted is not approved.

b. With respect to your request to distribute printed matter regarding Article 138, UCMJ, it is noted that the precise material you wish to distribute is taken verbatim from a copyrighted document entitled "Turning the Regs Around," which said copyright is held by the Bay Area Turning the Regs Around Committee (1973). Although you include in your letter (reference (a)) a copy of a note from some person purporting to be one Catherine M. Gates, which note purports to grant "permission" to a Private J. A. Kirchoff and others to reprint material from the cited pamphlet, there is no indication of the official relationship of the said Catherine M. Gates to the cited organization, nor of her legal authority to act in the capacity implied i.e., authority to grant permission to use copyrighted material. Accordingly, in the absence of a clear identification of the status and authority of the said Catherine M. Gates to so act, I cannot presume that requisite legal permission has been granted to utilize the material in question. If an affidavit, duly notarized, is obtained clarifying these points, then consideration can be given to the question of whether or not the proposed material is appropriate. Until then, however, this issue is not relevant, since no permission to distribute copyrighted material can be given due consideration until it has been clearly determined that such material has been lawfully released by the principal copyright holder or its, his or her authorized agent or attorney. Your request at this time is denied.

/s/ V. A. Armstrong
V. A. ARMSTRONG

EXHIBIT 9

[SEAL]

UNITED STATES MARINE CORPS
HEADQUARTERS
1st Marine Aircraft Wing, FMF
FPO, San Francisco, 96602

IN REPLY REFER TO:
17:WBD:gwb
5370
1 July 1974

From: Commanding General
To: Lance Corporal Frank L. HUFF, 549 82 34 79/
6639, U.S. Marine Corps
Via: (1) Commanding Officer, Marine Aircraft Group
15
(2) Commanding Officer, Headquarters and
Maintenance Squadron 15
Subj: Request to Distribute Leaflet; "We Hold These
Truths to be Self-Evident (But Do the Brass?)"
Ref: (a) LCpl Huff's ltr of 24 June 1974

1. I have reviewed your request to distribute the leaflet contained in enclosure (1) of reference (a). Your request is approved.
2. You have specifically requested to distribute the subject leaflet along the sides of the street that runs from the Main Gate, Marine Corps Air Station, Iwakuni, Japan, to the area known as "Three Corners", and you have requested to make this distribution during your off duty hours and days during the period between 1700 and 1900 only on 2 July 1974 through 6 July 1974. As such, those are the limits of your permission. In addition, you are to insure that the document that you distribute is *precisely* the document that you have requested permission to distribute. Additionally, you are to insure that the distribution is made in such a way as to constitute no interference with the performance of any of your

duties or the duties of any other personnel, that no government material will be used, that you will not coerce anyone to take or read copies of the subject leaflet, that you will avoid interference with pedestrian and vehicular traffic, that you will not use any stands, and that you will not post any literature announcing the distribution.
3. Although this permission extends to the period described in paragraph 2 above, should you have any military duties to perform during these periods, this permission is not to be construed to permit you to avoid those duties in anyway whatsoever.

/s/ V. A. Armstrong
V. A. ARMSTRONG

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0043

PRIVATE FRANK L. HUFF, ET AL., PLAINTIFFS

v.

SECRETARY OF THE NAVY, ET AL., DEFENDANTS

AFFIDAVIT OF ROBERT A. FALATINE

I, Robert A. Falatine, being duly sworn, do depose and say:

1. I am Robert A. Falatine, 380-62-9053, a Lance Corporal in the U.S. Marine Corps assigned to the First Marine Aircraft Wing at Marine Corps Air Station, Iwakuni, Japan.

2. I have read and hereby verify the complaint in the above-captioned action in which I am a plaintiff and attest to its contents.

3. On or about May 8, 1974, pursuant to 1st Marine Aircraft Wing Order 5370.1A/Marine Corps Air Station Order 5370.3A, I submitted a letter to the Commanding General, 1st Marine Aircraft Wing, requesting permission to distribute for signatures a copy of a petition to Congressperson Ronald Dellums in support of universal and unconditional amnesty for Vietnam war resisters. (A copy of the petition was submitted to the Court as Exhibit B to the Complaint.) I asked permission to distribute the petition from May 15 to May 31 outside a post exchange and an enlisted men's club. In the alternative, I asked permission to circulate the petition on the street outside the main gate of the Air Station. I stated that the circulation of the petition would be accomplished while out of uniform and off-duty, would involve the use of no government materials, would not interfere with traffic or the performance of any military duties and would not result in any involvement in Japanese political

affairs. A copy of said letter is attached as Exhibit 1 to this affidavit.

4. On May 20, 1974, Gen. V. A. Armstrong, Commanding General, 1st Marine Aircraft Wing, denied my requests to circulate the petition. In his response, Gen. Armstrong said that the petition contained "gross misstatements and implications of law and fact" and that to allow its distribution "would be contrary to my responsibility as a commander to maintain good order and discipline and afford proper discipline to the men under my command." A copy of said letter is attached as Exhibit 2 to this affidavit.

5. On May 23, 1974, I submitted a request for redress of wrongs under Article 138 of the Uniform Code of Military Justice to Gen. Armstrong, requesting that WgO 5370.1A/MCASO 5370.3A be rescinded because they violated the First Amendment to the U.S. Constitution and Department of Defense Directive 1325.6. I requested a reply within seven working days. A copy of said letter is attached as Exhibit 3 to this affidavit.

6. On or about June 8, 1974, having received no response to my May 23 letter to Gen. Armstrong, I prepared and filed a complaint directed in accordance with the provisions of Article 138 to the "Officer Exercising General Court-Martial Jurisdiction over Major General V. A. Armstrong, Commanding General, First Marine Aircraft Wing." This letter also requested that WgO 5370.1A/MCASO 5370.3A be rescinded. A copy of said letter is attached as Exhibit 4 to this affidavit.

7. On June 12, 1974, I received a response (dated June 8) from Gen. Armstrong, denying my May 23 request for revocation of WgO 5370.1A/MCASO 5370.3A. A copy of said letter is attached as Exhibit 5 to this affidavit.

8. On June 18, 1974, I received a response from Commander, Marine Corps Bases, Pacific to my Article 138 complaint on June 8. The complaint was returned without action because it was "not forwarded in accordance with the provisions of [Article 138]" in spite of the fact that Article 138 states that a complaint may be

made to *any* superior commissioned officer who shall forward the complaint to the officer exercising General Court Martial jurisdiction over the officer against whom the complaint is made. A copy of said "response" is attached as Exhibit 6 to this affidavit.

9. On June 24, 1974, pursuant to WgO 5370.1A/MCASO 5370.3A, I requested permission to distribute copies of a leaflet containing the Declaration of Independence and the First Amendment to the U.S. Constitution in front of the Mini Mart and the Main Side Enlisted Men's Club on base during off-duty hours on the dates July 4 to July 7 and July 25 to July 30. On the same date, my co-plaintiff, Frank L. Huff requested permission to distribute the same leaflet off base. A copy of my letter request is attached as Exhibit 7 to this affidavit. (A copy of the leaflet has already been submitted to the Court as Exhibit C to the complaint.)

10. On July 1, 1974, Gen. Armstrong denied my request, stating that part of the leaflet was "disrespectful and contemptuous" of superior officers and that distribution of the leaflet presented "a clear hazard to the discipline and morale within the 1st Marine Aircraft Wing." A copy of said letter is attached as Exhibit 8 to the affidavit. On the same date, Pvt. Huff's request to distribute the same leaflet off base was approved by Gen. Armstrong.

11. On or about July 12, 1974, I and several other Marines while off-duty and out of uniform outside the main gate to the air station showed to our fellow Marines a copy of a letter to Senator J. William Fulbright concerning United States support for the government of South Korea. (A copy of the letter has been submitted to the Court as Exhibit D to the complaint.) So as not to violate WgO 5370.1A/MCASO 5370.3A, I did not distribute copies of the letter or ask for signatures, I merely showed it to those interested. Nevertheless, I was arrested by military police and charged with violating those regulations. The charges against me were subsequently dismissed.

12. On September 26, 1974, I forwarded a complaint pursuant to Article 138 of the UCMJ to the Commandant

dant of the Marine Corps. requesting that WgO 5370.1A be rescinded. A copy of the letter is attached as Exhibit 9 to this affidavit.

13. On September 27, 1974, the Commandant of the Marine Corps by Gen. John R. DeBarr, Director of the Judge Advocate Division of the Marine Corps, responded to an inquiry conducted by Senator Philip A. Hart on my behalf regarding the legality of WgO 5370.1A. The Commandant's response stated that the regulation was supported by a commanding officer's authority to protect the loyalty, discipline and morale of his command and additionally, by the treaty agreement between the United States and Japan which prohibits members of the U.S. armed forces from engaging any political activity in Japan. A copy of the Telex letter is attached as Exhibit 10 to this affidavit.

14. My attempts to comply with WgO 5370.1A/MCASO 5370.3A have been met with refusals to allow me to distribute leaflets and petitions to Congress, activities which should be guaranteed by the First Amendment, and, on one occasion, by my arrest. In any event, I should not be required to undergo a cumbersome, time-consuming censorship process to exercise my Constitutional right to petition my government and to distribute newspapers and other information of interest to my fellow Marines.

15. I do not understand what standards, if any, govern the review process of materials which I and other Marines seek to distribute. If there are any standards, they have been applied arbitrarily and inconsistently by the Commanding General, 1st Marine Aircraft Wing. For example, when I sought to distribute on-base copies of a leaflet containing the Declaration of Independence and the First Amendment, my request was denied on the basis of the leaflet's contents. Yet on the same day, a request by another Marine to distribute the same leaflet off-base was approved. (See para. 10 above.)

16. I do not understand how far the aforementioned regulations extend. They appear to prohibit the distribution of petitions to Congress, newspaper articles,

magazines, religious literature, personal letters and virtually anything else that can be contained on a printed page. The regulations also state that Marines cannot "originate" such material which could preclude the writing of letters to the editor of a newspaper or an individual petition to a Congressional representative. I do not think anyone has any idea of when to enforce these regulation or to what situations they are supposed to apply. I was arrested merely for *holding* and *showing* to other Marines a copy of a letter to a U.S. Senator while I was off-base and off-duty.

17. I desire to initiate and distribute petitions, newspapers and other information of topical importance to members of the Marine Corps. I believe that I have an absolute right to circulate petitions to the Congress of the United States while on base, as long as I do it in a reasonable time, place and manner without interfering with any military duties or operations. I also think I have a right to distribute any literature off base as long as I do not involve myself with Japanese politics or the conduct of the Japanese government. I wish to distribute material off base only to American servicepersons and their families in the proximity of the base and only on subjects which pertain to American government, for example, information on the Declaration of Independence and on amnesty for American war resisters.

18. I fear that I will be subject to arrest and other forms of intimidation if I continue to try to exercise my Constitutional rights. I also believe that the Marine Corps has in its files information on my arrest of July 12 which may jeopardize my future employment and other opportunities which might otherwise be available to me.

19. I have already suffered substantial injury by my inability to exercise those right guaranteed to me as an American citizen. Since May, 1974, I have sought to use the administrative process to change the afore-mentioned regulations, all to no avail. In the meantime, my rights

continue to be curtailed so I am forced to seek relief in a civilian court.

/s/ Robert A. Falatine
ROBERT A. FALATINE

/s/ Hugh C. Brown
CAPT, USMCR

Authorized to administer oaths and act as Notary Public under Article 136(a), Uniform Code of Military Justice; Title 10 USC, Sec. 936; and Public Law 86-589 approved 5 Jul 60.

Sworn and subscribed to and before me on this 19th day of May, 1975.

EXHIBIT 1

Headquarters and Maintenance Squadron 17
 Marine Wing Support Group 17
 1st Marine Aircraft Wing
 Fleet Marine Force Pacific
 FPO, San Francisco 96602

8 May 1974

From: Lance Corporal Robert A. FALATINE, 380 62
 9053/1341, USMC

To: Commanding General, 1st Marine Aircraft Wing
 Commanding Officer, Marine Air Corps Station,
 FPO Seattle 98764

Via: (1) Commanding Officer, Headquarters and
 Maintenance Squadron 17
 (2) Commanding Officer, Marine Wing Support
 Group 17

Ref: (a) WgO 5370.1A/MCASO 5370.3A

Subj: Request for prior approval to circulate a peti-
 tion as required by WgO 5370.1A/MCASO
 5370.3A.

Encl: (a) Petition to Congressperson Donald Dellums
 for Universal and Unconditional Amnesty

I, Robert A. FALATINE, 380 62 9053, in compliance
 with reference () hereby request permission to circulate
 and obtain signatures on enclosure (a) outside the Main
 Exchange, MCAS and/or outside the Main Side Enlisted
 Men's Club. If you cannot grant my request to circulate
 this petition on base, then I secondarily request permis-
 sion to circulate this petition along the side of the street
 which runs from the main gate, MCAS, Iwakuni, Japan,
 to the area known as "Three Corners." This permission
 is requested for my off-duty days and hours during the
 period between May 15, 1974 and May 31, 1974 from
 12:00 to 21:30 hours.

This circulation:

- (a) will be during off-duty hours and out of uniform;
- (b) will constitute no interference with the performance of my duties or the duties of other military personnel;
- (c) will involve the use of no government material;
- (d) will not result in the coercing of anyone to take or read or sign copies of enclosure (a)
- (e) will be done in such a way as to avoid interference with pedestrian and vehicular traffic;
- (f) will not involve the use of any stands;
- (g) will not involve the posting of any literature announcing this circulation;
- (h) will honor all military courtesy; and
- (i) will not in any way result in my involvement in Japanese political affairs;

And I respectfully request that this letter be forwarded up the chain until it reaches the person who has the full authority to approve or deny this request and that I receive a written response to this request on or before May 14, 1974. I also request written assurance that those persons signing enclosure (a) will not be prosecuted.

ROBERT A. FALATINE

EXHIBIT 2

[SEAL]

COMMANDING GENERAL

1st Marine Aircraft Wing, FMF
FPO, San Francisco, 96602

IN REPLY REFER TO:

17:MPM:kps
1000
20 MAY 1974

From: Commanding General

To: Lance Corporal Robert A. FALANTINE, 380 62
9053/1341, U.S. Marine CorpsVia: (1) Commanding Officer, Marine Wing Support
Group 17, 1st Marine Aircraft Wing

(2) Commanding Officer, Headquarters and
Maintenance Squadron 17, Marine Wing
Support Group 17, 1st Marine Aircraft
Wing

Subj: Request for prior approval to circulate a petition

Ref: (a) Your letter of 10 May 1974

1. Reference (a), which requested permission to circulate a petition addressed to Congressperson Ronald Dellums, was forwarded to me through your chain of command. Careful consideration has been given to the request therein.

2. The petition that you desire to circulate contains gross misstatements and implications of law and fact. In addition, it impugns by innuendo the motives and conduct of the Commander-in-Chief of the Armed Forces in the exercise of his constitutional responsibility. To authorize permission to circulate such grossly erroneous and misleading commentary would be contrary to my responsibility as a commander to maintain good order and discipline and afford proper guidance to the men under my command. Accordingly, your request to circulate the petition as submitted is not approved.

/s/ V. A. Armstrong
V. A. ARMSTRONG

EXHIBIT 7

HEADQUARTERS AND MAINTENANCE
SQUADRON 17

Marine Wing Support Group 17
 1st Marine Aircraft Wing
 Fleet Marine Force Pacific
 FPO San Francisco, CA 96602

24 Jun 1974

From: Lance Corporal Robert A. Falatine, 380 62 9053/
 1341 USMC

To: Commanding General, 1st Marine Aircraft Wing

Via: Commanding Officer, Headquarters and Maintenance Squadron 17
 Commanding Officer, Marine Wing Support Group 17

Subj: Request for prior approval to distribute copies of enclosure (1) as required by WgO 5370.1A/MCASO 5370.3A

Ref: (A) WgO 5370.1A
 (B) MCASO 5370.3A

Encl: Leaflet containing the Declaration of Independence and the First Amendment to the U.S. Constitution

I, Robert A. FALATINE, IN COMPLIANCE WITH REFERENCES (A) and (B) request permission to distribute copies of enclosure (1) in front of the Mini Mart, Main Side and in front of the Main Side Enlisted Men's Club, MCAS, Iwakuni. This permission is requested for my off-duty hours and days during the period between 4 July 1974 thru 7 July and between 25 July 1974 thru 30 July 1974.

This distribution:

- (a) Will be during off-duty hours and out of uniform.
- (b) Will constitute no interference with the performance of my duties or the duties of any other military personnel.
- (c) Will involve the use of no government material.
- (d) Will not result in the coercing of anyone to take or read copies of enclosure (1).
- (e) Will be done in such a way as to avoid interference with pedestrian and vehicular traffic.
- (f) Will not involve the use of any stands.
- (g) Will not involve the posting of any literature announcing this distribution.
- (h) Will honor military courtesy, and will not in any way result in my involvement in Japanese political affairs.

I respectfully request that this letter be forwarded up my chain of command until it reaches the person who has the full authority to approve or deny this request and that I receive a written response to this request on or before 2 July 1974.

/s/ Robert A. Falatine
 ROBERT A. FALATINE

EXHIBIT 8

[SEAL]

UNITED STATES MARINE CORPS
HEADQUARTERS1st Marine Aircraft Wing, FMF
FPO, San Francisco, 96602

IN REPLY REFER TO:

17:WBD:gwb
5370
1 JUL 1974

From: Commanding General

To: Lance Corporal Robert A. FALATINE, 380 62
90 53/1341, U.S. Marine CorpsVia: (1) Commanding Officer, Marine Wing Support
Group 17
(2) Commanding Officer, Headquarters and
Maintenance Squadron 17Subj: Request to Distribute Leaflet; "We Hold These
Truths to be Self-Evident (But Do the Brass?)"

Ref: (a) LCpl Falatine's ltr of 24 June 1974

1. I have reviewed your request to distribute copies of the subject leaflet. The introductory paragraph is, by transparent implication, disrespectful and contemptuous of all of your superiors, officers, noncommissioned officers and civilians alike. As such, I consider that distribution of the flyer would present a clear hazard to the discipline and morale within the 1st Marine Aircraft Wing. Your request to distribute enclosure (1) to reference (a) is not approved.

/s/ V. A. Armstrong
V. A. ARMSTRONG

APPENDIX VI

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 75-0043

PRIVATE FRANK L. HUFF, ET AL., PLAINTIFFS

v.

SECRETARY OF THE NAVY, ET AL., DEFENDANTS

AFFIDAVIT OF ROBERT E. GABRIELSON

I, Robert E. Gabrielson, being duly sworn, do depose and say:

1. I am a Sergeant in the U.S. Marine Corps, service no. 558-90-6571, assigned to the Marine Corps Air Station, Iwakuni, Japan.

2. I have read and hereby verify the complaint in the above-captioned action in which I am a plaintiff and attest to its contents.

3. On July 30, 1974, pursuant to Marine Corps Air Station Order 5370.1A/First Marine Aircraft Wing Order 5370.3A, I requested permission from the Commanding Officer, Marine Corps Air Station, Iwakuni, Japan, to distribute copies of a letter to Senator J. William Fulbright and copies of a statement on the arrest of five Marines (including my co-plaintiffs Frank L. Huff and Robert A. Falatine) for showing copies of the Fulbright letter to other Marines without prior command approval. (A copy of the letter and statement were submitted to the Court as Exhibits D and E to the complaint.) I requested permission to distribute the materials both off base near the main gate to the Air Station and on base in the "B" Barracks area. I said that the distribution would be accomplished while off duty and out of uniform, would not interfere with the performance of any military duties, would honor military courtesy and would

not result in my involvement in Japanese political affairs. A copy of said letter to the Comanding Officer, MCAS Iwakuni is attached as Exhibit 1 to this affidavit.

4. On August 6, 1974, I received a response from Col. E. S. Murphy, Commanding Officer, MCAS Iwakuni, partially granting my request. He allowed me to distribute the letter and statement on the sidewalks in the "B" Barracks area but not in the barracks themselves. He denied my request to distribute the materials outside the main gate because he said this constituted "a form of political activity within the host country" which was prohibited by the Status of Forces Agreement between the United States and Japan. A copy of said letter is attached as Exhibit 2 to this affidavit.

5. On August 13, 1974, I submitted a request for redress of wrongs under Article 138 of the Uniform Code of Military Justice to the Commanding Officer of MCAS Iwakuni, requesting that MCASO 5370.3A be rescinded as violative of the First Amendment to the U.S. Constitution. I also pointed out that the kind of material I sought to distribute off base in my request of July 30 was not considered by Japanese authorities to be "political activity" prohibited by the Status of Forces Agreement. A copy of my Article 138 complaint is attached as Exhibit 3 to this affidavit.

6. On September 3, 1974, Lt. Col. W. C. Service, III, Acting Commanding Officer, MCAS Iwakuni, denied my Article 138 request for redress of grievances. A copy of this response is attached as Exhibit 4 to this affidavit.

7. On September 10, 1974, I submitted a request for redress of wrongs under Article 138 to the Commanding General, 1st Marine Aircraft Wing, requesting that MCASO 5370.3A be rescinded. A copy of this Article 138 request is attached as Exhibit 5 to this complaint.

8. I continue to want to distribute petitions, newspapers and other written material without having to go through a censorship procedure which allows a commanding officer to pass judgment on the content of the materials I seek to distribute.

9. Especially where distribution of news material and petitions to government are concerned, time is of the essence. I have already suffered substantial injury by

waiting these many months for the Marine Corps to rescind its censorship system.

10. I fear arrest and other forms of intimidation as has been incurred by my co-plaintiffs if I assert my First Amendment rights. Following the procedures set forth in MCASO 5370.3A is intimidating in itself, for it requires me to offer my personal views for judgment by the commanding officer and marks me as a "dissident" in the eyes of the command.

11. MCASO 5370.3A/WgO 5370.1A are overbroad and indefinite in their terms. The regulations seem to prohibit any Marine from handing any written material to any other Marine without prior approval of the command.

12. I believe that the Commanding Officer, Marine Corps Air Station Iwakuni has misconstrued the Status of Forces Agreement between the United States and Japan. I have never sought nor do I desire to seek to distribute any material which is directed toward Japanese politics or government. Yet my Commanding Officer in his letter of August 6 (see Exhibit 2) seems to believe that political information of any sort—even if it pertains exclusively to the United States—is prohibited by the Status of Forces Agreement. It is my understanding that Japanese authorities have construed the Status of Forces Agreement as prohibiting only direct involvement by American military personnel in Japanese political activities.

/s/ Robert E. Gabrielson
ROBERT E. GABRIELSON

Sworn and subscribed to and before me on this 21st day of May, 1975, U.S. Marine Corps Air Station, Iwakuni, Japan.

/s/ Douglas C. Brown
DOUGLAS C. BROWN
Capt USMCR
Judge Advocate

Authorized to administer oath and act as Notary Public under Article 136(a), Uniform Code of Military Justice; Title 10 USC, Sec. 936; and Public Law 86-589 approved 5 Jul 60.

EXHIBIT 1

30 July, 1974

From: SGT Robert E. Gabrielson 558 90 6571
 To: Commanding Officer, MCAS Iwakuni
 Via: Officer in Charge, Air Traffic Control
 Operations Officer, MCAS Iwakuni
 Commanding Officer, H+HS, MCAS Iwakuni
 Subj: Request for prior approval to distribute copies of
 enclosure (1) as required by WgO 5370.1A/
 MCASO 5370.3A
 Ref: (A) WgO 5370.1A
 (B) MCASO 5370.3A
 Encl: (1) Leaflet and individual letter to Sen. Ful-
 bright

I, Robert E. Gabrielson, in compliance with references (A) and (B) request permission to distribute copies of enclosure (1) along the side of the street that runs from the main gate of MCAS, Iwakuni, Japan to the area known as "Three Corners" and (to be considered separately) in the "B" Barracks area of Main Side, MCAS, Iwakuni, Japan. This permission is requested for my off duty hours during the month of August, 1974.

This distribution:

- (a) Will be during off-duty hours and out of uniform.
- (b) Will constitute no interference with the performance of my duties or the duties of any other military personnel.
- (c) Will involve the use of no government material.
- (d) Will not result in the coercing of anyone to take or read copies of the enclosure (1).
- (e) Will be done in such a way as to avoid interference with pedestrian and vehicular traffic.
- (f) Will not involve the use of any stands.
- (g) Will not involve the posting of any literature announcing this distribution.

- (h) Will honor military courtesy, and will not in any way result in my involvement in Japanese political affairs.

I respectfully request that this letter be forwarded up my chain of command until it reaches the person who has the full authority to approve or deny this request on or before August 2, 1974. Unnecessary delay or alteration in the dates requested so as to effectively prohibit distribution during the period requested will be considered by me to be undue harassment and illegitimate restriction of my First Amendment rights.

/s/ Robert E. Gabrielson
 ROBERT E. GABRIELSON

EXHIBIT 2

U.S. MARINE CORPS AIR STATION
FPO Seattle 98764

SJA/KTT/rlp
5500
6 AUG 1974

From: Commanding Officer
 To: Sergeant Robert E. GABRIELSON, 558 90 6571,
 U.S. Marine Corps
 Via: (1) Commanding Officer, Headquarters and
 Headquarters Squadron, U.S. Marine Corps
 Air Station, FPO Seattle 98764
 (2) Operations Officer, U.S. Marine Corps Air
 Station, FPO Seattle 98764
 (3) Air Traffic Control Officer, U.S. Marine Corps
 Air Station, FPO Seattle 98764
 Subj: Request for prior approval to distribute copies of
 enclosures (1) and (2) of the basic correspond-
 ence
 Ref: (a) Sgt GABRIELSON's ltr dtd 30 July 1974
 (b) Status of Forces Agreement

1. I have carefully reviewed your request to distribute the leaflets contained as enclosures in reference (a).
2. Your request to distribute these enclosures in the Kawashima area is considered to be a form of political activity within the host country and would be in violation of reference (b). Therefore, your request to distribute the enclosures of the basic correspondence along the street which runs from the Main Gate, MCAS, Iwakuni, to the area known as "Three Corners" is denied.
3. In your letter you have asked that I consider separately a request to distribute the enclosures of your letter in the "B" barracks area of MCAS, Iwakuni. This is interpreted to mean along the sidewalks adjacent to and at the entrances of building #278. This portion

of your request is approved, however, you are reminded that you are not to attempt to distribute the materials in the barracks.

4. This permission extends to you alone and only for the materials which you have requested to distribute. Additionally, you are to insure that distribution will be in such a way as to constitute no interference with the performance of any of your duties or the duties of any other personnel, that no government material will be used, that you will in no way coerce any person to accept or read your material, that you will not engage in argument or debate of the issue presented in your material, that you will avoid interference with traffic, either vehicular or pedestrian, that you will not use stands or post literature announcing your distribution, and that you will not be in uniform during your distribution.
5. You are also reminded that it will be your responsibility to police up any of your materials which may be discarded within the area in which you are distributing.
6. This permission covers the period for which you have requested but is not to be construed as authorization to avoid any of your military duties and you are reminded that such permission is based on strict compliance on your part with the provisions of this letter of permission.

E. S. MURPHY

SUPREME COURT OF THE UNITED STATES

No. 78-599

SECRETARY OF THE NAVY, ET AL., PETITIONERS

v.

FRANK L. HUFF, ET AL.

ORDER ALLOWING CERTIORARI. Filed March 19, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is set for oral argument in tandem with No. 78-1006, *Brown v. Glines*.